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James M. Ward, d/b/a Mid-South Construction and Tri-State Building and Construction Trades Council, National Building and Construction Trades Department, AFL-CIO. Case 9-CA-36510

August 27, 2001

SUPPLEMENTAL DECISION AND ORDER

BY MEMBEERS LIEBMAN, TRUESDALE, AND WALSH

On July 8, 1999, the National Labor Relations Board issued a Decision and Order,¹ *inter alia*, directing James M. Ward, an individual d/b/a Mid-South Construction (the Respondent) to make whole Donald Huff, Michael Jessee, Charles E. Dolen Jr., Greg Damron, Stephen R. Conley, John F. Moore, Steve Montoney, Charles E. Dolen, Roger Damron, Timothy D. Kirk, Lester Murray, Joe Brumfield, and Andrew Land for their losses resulting from the Respondent's unfair labor practices in violation of Section 8(a)(1) and (3) of the National Labor Relations Act. On October 5, 2000, the United States Court of Appeals for the Sixth Circuit issued its Judgment enforcing the Board's Order.

A controversy having arisen over the amount of backpay due the discriminatees, on May 24, 2001, the Regional Director for Region 9 issued a compliance specification and notice of hearing alleging the amount due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification,² the Respondent failed to file an answer.

On July 23, 2001, the General Counsel filed with the Board a Motion for Summary Judgment with memorandum in support and exhibits attached. On July 24, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no

response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment. Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification and we will order payment by the Respondent of the amounts to the discriminatees, plus interest accrued on the amounts to the date of payment.

ORDER

The National Labor Relations Board orders that the Respondent, James M. Ward, d/b/a Mid-South Construction, Jemison, Alabama, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest accrued to the date of payment and minus tax withholdings required by Federal and State laws:

¹ 328 NLRB No. 132.

² Although a copy of the compliance specification was sent by certified mail to the last known address of the Respondent on May 24, 2001, the copy was returned to the Regional Office as "Attempted—Not Known." It is well established that the failure to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *National Automatic Sprinklers*, 307 NLRB 481 fn. 1 (1992); and *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). In any event, the Regional Office sent the compliance specification to the Respondent again at its last known address by regular mail on June 14, 2001, and this copy of the compliance specification has not been returned to the Regional Office as undelivered.

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

Donald Huff	\$337.50
Steve Montoney	216.00
Charles E. Dolen	216.00
Charles E. Dolen Jr.	216.00
Michael Jessee	216.00
Stephen R. Conley	216.00
Roger Damron	216.00
Lester Murray	162.00
Timothy D. Kirk	162.00
John F. Moore	162.00
Greg Damron	162.00
Joe Brumfield	256.00

Andrew Land	256.00
TOTAL:	\$2793.50

Dated, Washington, D.C. August 27, 2001

Wilma B. Liebman,	Member
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John C. Truesdale,	Member
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Dennis P. Walsh,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD